

EXHIBIT A

Rainey, Nolley M.

From: Roger Higgins <rhiggins@rogerhigginslaw.com>
Sent: Thursday, March 26, 2015 9:46 AM
To: Mayers, Etta R.; Baldwin, David J.
Subject: W. R. Grace - Norfolk Southern Claim
Attachments: NS_Stip_RJH_3-25-15.docx; Comp_NS_Stip_3-25-15.pdf

Etta and David,

Here is a revised draft of the proposed stipulation of facts.

Have you had the opportunity to discuss settlement with your client?

We have the hearing coming up on April 14. It would be very nice to get this wrapped up before then.

Regards. R

Roger J. Higgins

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RJH DRAFT AS OF 3/25/15
PREPARED FOR LITIGATION | DO NOT FILE
SUBJECT TO ALL APPLICABLE PRIVILEGES

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
)
W. R. GRACE & CO., et al., ¹) Case No. 01-01139 (JKF)
) (Jointly Administered)
Reorganized Debtors.)
)
)

**PROPOSED STIPULATION OF RECORD REGARDING RESOLUTION OF CLAIM
NO. 7021, FILED BY NORFOLK SOUTHERN RAILWAY COMPANY**

WHEREAS, on April 2, 2001, the above-captioned reorganized debtors (the “Reorganized Debtors”) filed petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, on April 22, 2002, the Bankruptcy Court issued a bar date order [Docket no. 1963], which established March 31, 2003, as the deadline for filing certain claims against the Reorganized Debtors;

WHEREAS, on March 27, 2003, Norfolk Southern Railway (“NS,” together with the Reorganized Debtors, the “Parties”) timely filed a proof of claim, no. 7021 (the “NS POC”), asserting, inter alia, a right to indemnification from the Reorganized Debtors under following agreements:²

- Agreement between Southern Railway Company (“Southern”) and W. R. Grace & Co. (“Grace”), dated as of December 15, 1980 (the “Right-of-Way Agreement”);

¹ The Reorganized Debtors comprise W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc. or “Grace”) and W. R. Grace & Co.-Conn. (“Grace-Conn.”).

² On or about July 7, 1998, NS became the successor-in-interest to Southern Railway Company (“Southern”). (Proof of Claim Addendum, at pg. 2.). “NS” and “Southern” are used interchangeably in this Stipulation.

- Agreement between Southern and Grace, dated as of December 15, 1980 (the “Operating Agreement”);
- Supplemental agreement between Southern and Grace, dated November 7, 1983 (the “1983 Supplemental Agreement”);
- Supplemental agreement between Southern and Grace, dated October 3, 1990 (the “1990 Supplemental Agreement”);

WHEREAS, on July 20, 2009, the Reorganized Debtors filed their *Objection to the Proof of Claim Filed by Norfolk Southern Railway Company* [Docket no. 22553] (the “Objection”);

WHEREAS, On or about August 26, 2009, NS filed its *Preliminary Response of Norfolk Southern Railway to Debtors' Objection to the Proof of Claim Filed by Norfolk Southern Railway* [Docket no. 22975] (the “Response”).

WHEREAS, no mediation or arbitration has been held;

WHEREAS, the Parties agreed to submit, and on or about [date], the Reorganized Debtors filed this *Proposed Stipulation of Facts Regarding Resolution of Claim No. 7021, Filed by Norfolk Southern Railway Company* [Docket no. *****] (the “Stipulation”) to aid in the Bankruptcy Court’s resolution of the NS POC dispute;

WHEREAS, on or about [date], the Reorganized Debtors filed on behalf of themselves and NS a certificate of counsel with a form of *Agreed Order Regarding Briefing on Cross-Motions for Summary Judgment Regarding Resolution of Claim No.7021, Filed by Norfolk Southern Railway Company* [Docket no. *****] (the “Agreed Scheduling Order”); and

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the Parties, through their undersigned counsel, that the following documents, in addition

to the NS POC, the Objection and the Response, will constitute the record for purposes of this proceeding:

- A. The Documents admitted into evidence in the following case: *Kirkland v. Norfolk Southern Railway Company*, C.A. No. 45273 (the “State Court Action”);
- B. The Complaint filed in the State Court Action;
- C. Transcripts of testimony in the State Court Action, vols. I-IV;
- D. The Jury Verdict in the State Court Action;
- E. The Judgment on Verdict in the State Court Action;
- F. The Plaintiff’s Satisfaction in the State Court Action;
- G. The Right-of-Way Agreement dated December 15, 1980;
- H. The Operating Agreement dated December 15, 1980;
- I. The 1983 Supplemental Agreement dated November 7, 1983;
- J. The 1990 Supplemental Agreement dated October 3, 1990;
- K. Letter NS to Grace dated September 15, 1999;
- L. Letter Grace to NS dated September 29, 1999;
- M. Letter NS to Grace dated October 7, 1999;
- N. Letter Grace to NS dated October 14, 1999;
- O. Letter NS to Grace dated July 11, 2000;
- P. Letter NS to Grace dated January 9, 2001;
- Q. Letter Grace to NS dated March 19, 2001;
- R. Letter NS to Grace dated April 2, 2001;
- S. Letter Grace to NS dated April 12, 2001;
- T. Letter NS to Grace dated May 30, 2001; and

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U. Letter NS to Grace July 2, 2001.

Dated: March __, 2015

Dated: March __, 2015

a.

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Etta R. Mayers (DE Bar No. 4164)
R. Stephen McNeill (DE Bar No. 5210)
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Attorneys for the Reorganized Debtors

Attorneys for Norfolk Southern Railway

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WHEREAS, on April 2, 2001, the above-captioned reorganized debtors (the “Reorganized Debtors”) filed petitions for relief under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

¹—The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co.-Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food N-Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., G C Limited Partners I, Inc. (f/k/a Grace Cocoa Limited Partners I, Inc.), G C Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc., GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homeo International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc.), Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedeo, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc.), E&C Liquidating Corp., Emerson & Cuming, Inc.), NS Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Guleh West Coal Company and H-G Coal Company. The Reorganized Debtors comprise W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc. or “Grace”) and W. R. Grace & Co.-Conn. (“Grace-Conn.”).

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E. The Judgment on Verdict in the State Court Action;

F. The Plaintiff’s Satisfaction in the State Court Action;

~~C.G.~~ G. The Right-of-Way Agreement dated December 15, 1980;

~~D.H.~~ H. The Operating Agreement dated December 15, 1980;

~~E.I.~~ I. The 1983 Supplemental Agreement dated November 7, 1983;

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~~F.J.~~ The 1990 Supplemental Agreement dated October 3, 1990;

~~G.K.~~ Letter NS to Grace dated September 15, 1999;

~~H.L.~~ Letter Grace to NS dated September 29, 1999;

~~I.M.~~ Letter NS to Grace dated October 7, 1999;

~~J.N.~~ Letter Grace to NS dated October 14, 1999;

~~K.O.~~ Letter NS to Grace dated July 11, 2000;

~~L.P.~~ Letter NS to Grace dated January 9, 2001;

~~M.Q.~~ Letter Grace to NS dated March 19, 2001;

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~~Q.U.~~ Letter NS to Grace July 2, 2001.

Dated: ~~February~~ March __, 2015

Dated: ~~February~~ March __, 2015

a.

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